IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 66 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANLAL VARMA

Versus

KACHARABHAI G VAGHELA

Appearance:

MR NITIN M AMIN for Petitioner

MR PK JANI for Respondent No. 1

MR SJ DAVE, APP for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/06/2000

ORAL JUDGEMENT

Present petitioner, who is Secretary of Amrut Kunj Co.Operative Housing Society, Kalol, Dist. Mehsana, has filed the present Criminal Revision Application against the respondents-original accused Nos.1, 2 and 3

against whom one Visabhai Valajibhai Vaghela had filed one criminal complaint directly into the Court of learned Judicial Magistrate First Class at Kalol on 9-11-1990 under Sec.409 read with Sec.34 of Indian Penal Code. The complaint has been filed on the allegation that in all, Rs.4,16,213/- were misappropriated by the respondent-original accused Nos.1 and 2. After recording verification, learned Judicial Magistrate First Class, Kalol passed an order on 9-11-1990 directing the Kalol City Police Station to investigate the matter under Sec.156(3) of Cr.P.C. and to submit the report within stipulated time. On receiving the same, Police started investigation and at the end of it, submitted `C' summary report in the Court of learned Judicial Magistrate First Class, Kalol and in pursuance of it, he issued notice to the complainant. After receiving the same, complainant submitted a purshis dated 17-12-1991 requesting the Court that since the matter is settled between the parties, i.e. between the complainant and respondent-original accused Nos.1 and 2, `C' summary report may be accepted. Taking on record the above purshis dated 17-12-1991 Court accepted the `C' summary report submitted by the Investigating Officer and discharged the accused even without giving any opportunity to the Society who is affected party in this case. Against that order, Secretary of the Society filed present Criminal Revision Application praying to set aside the order passed by the learned Judicial Magistrate First Class on the basis of concession given by the complainant.

2. In this case respondent No.3 has been added as an accused into the `C' summary report submitted by the Investigating Officer and, therefore, respondent No.3 has been added as a party respondent in this case.

3. I have heard learned counsel for the petitioner, Mr.N.M.Amin, learned counsel for the respondent No.1, Mr.P.K.Jani and learned APP for the State, Mr.S.J.Dave.

4. Only point which has arisen and argued before this Court is whether the Court can accept the `C' summary report only on the basis of concession given by the complainant in a non-compoundable offence or not. Learned counsel for the respective parties have agreed that the Court cannot decide the matter only on the concession given by the complainant in a non-compoundable matter and ought to have decided the `C' summary report on merits. So, the order passed by the court below is required to be quashed and set aside only on that ground and matter is required to be remanded back to the Court below with a direction that he should decide the `C'

summary report on merits without being influenced by the concession purshis dated 12-12-1991 filed by the original complainant.

4. Hence, this Criminal Revision Application is allowed. Order dated 17-12-1991 passed by the learned Judicial Magistrate First Class, Kalol in M.Case No.121 of 1990 is hereby quashed and matter is remanded back to the court below to decide the`C' summary report on merits not being influenced by the concession purshis dated 17-12-1991. Rule is made absolute accordingly to the aforesaid extent.

(R.P.DHOLAKIA,J.)
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